

**Amendment No. 2 to HB2556**

**Turner M  
Signature of Sponsor**

**AMEND Senate Bill No. 2616**

**House Bill No. 2556\***

by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

**SMALL BUSINESSES AND DIVERSITY BUSINESS ENTERPRISES**

SECTION \_\_. Tennessee Code Commission shall transfer Tennessee Code Annotated, Sections 12-3-809, 12-3-810, 12-3-811 and 12-3-812 to be a new Part 14 of Title 12, Chapter 3.

SECTION \_\_. Tennessee Code Annotated, Title 12, Chapter 3, Part 8, is amended by deleting Sections 12-3-801 through 12-3-808 in their entireties and by substituting instead the following:

Section 12-3-801

(a) This part and part 13 shall be known and may be cited as the "Tennessee Small Business and Diversity Business Enterprise Procurement and Contracting Opportunity Act."

(b) The purpose of this part is to create a program to enhance and increase participation of Tennessee small businesses, minority businesses, woman owned businesses and other small businesses in the state's procurements and contracts.

(c) Within the department of general services, there is created the governor's office of diversity business enterprise to administer the provisions of this act.

Section 12-3-802. As used in this part, and part 13 of this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of general services;

(2) "Contractor" means a business enterprise including a sole proprietorship, a partnership, a corporation, limited liability corporation or joint venture and is a for-profit business, to provide equipment, supplies, personal services, professional services, consulting services, construction services, and architectural and engineering services;

(3) "Corporation" means any major corporation that relocates to the state of Tennessee as a result of the department of economic and community development's fast track tax incentive infrastructure development program;

(4) "Department" means the department of general services;

(5) "Diversity business" or "diversity business enterprise" means any business that is minority owned, woman owned, or any other small businesses as defined in this part;

(6) "Goal setting" means establishing annual internal state agency goals to achieve the participation of Tennessee small businesses and diversity business enterprises in state procurement and contracting opportunities;

(7) "Good faith effort" means each state agency's, bidder's, proposer's, contractor's or corporation's efforts to utilize Tennessee small businesses and diversity business enterprises in the state's procurement and contracting opportunities;

(8) "Governor's office of diversity business enterprise" means the office charged with coordinating and directing the state of Tennessee's efforts to assist Tennessee small businesses and diversity businesses to compete successfully for the state of Tennessee's expenditures for goods and services;

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who has and can demonstrate membership in one (1) of the following groups:

(A) African American (a person having origins in any of the black racial groups of Africa);

(B) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(C) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(D) Native American (a person having origins in any of the original peoples of North America);

(10) "Minority owned business" means a business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background;

(11) "Other small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function, that does not reside in the State of Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period and employs no more that thirty (30) persons on a full-time basis and is certified as such;

(12) "Procurement and contracting" means the procurement, contract award and purchase order award of equipment, supplies,

personal services, professional services, consulting services, construction contracts, and architectural and engineering services;

(13) "State purchase order" means a document that authorizes a vendor to provide goods or services stated on the purchase order for a specific price and delivery point. A purchase order may result from an agency making a local purchase or a release order against an existing state contract or a one-time purchase bid and awarded by the purchasing division;

(14) "Small business program representative" means the state agency liaison to the governor's office of diversity business enterprise;

(15) "State agency" means state of Tennessee departments, agencies, commissions, boards, state building commission, higher education, and the board of regents;

(16) "State contract" means a written agreement for the purchase of equipment, supplies, personal services, professional services, consulting services, construction services, and architectural and engineering services;

(17) "Subcontractor" means a business under contract with a contractor, for providing equipment, supplies, personal services, professional services, consulting services, construction contracts, and architectural and engineering services;

(18) "Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three year period and employs no more than thirty (30) persons on a full-time basis and is certified as such;

(19) "Utilization plan" means a plan that outlines efforts to utilize the participation of Tennessee small businesses and diversity businesses on contracts, purchase orders or both contracts and purchase orders awarded;

(20) "Utilization commitment" means a commitment to utilize Tennessee small businesses and diversity businesses on contracts, purchase orders or both contract and purchases orders awarded by the state of Tennessee; and

(21) "Woman owned business" means a woman owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

Section 12-3-803.

(a) The commissioner is authorized to adopt rules and regulations establishing criteria and standards for Tennessee small businesses and diversity business enterprises that are eligible to be included under this part. Such rules and regulations shall include methods by which eligibility can be verified and the business deemed certified.

(b) Such criteria and standards for eligibility shall include, but not be limited to, the number of employees, the total gross receipts or annual sales volume, including ownership and control.

(c) The governor's office of diversity business enterprise shall develop a certification program and publish a directory of certified Tennessee small businesses and diversity business enterprises.

(d) Any business desiring to be certified as a Tennessee small business or diversity business enterprise shall make application to the governor's office of diversity business enterprises on an application as prescribed by such office.

#### Section 12-3-804

(a) The commissioner of general services is charged with responsibility for this part and part 13.

(b) The commissioner is authorized to adopt rules and regulations establishing criteria and standards for a program that complies with the regulations of this part and part 13.

(c) As directed by the commissioner, the governor's office of diversity business enterprise, attached to the department of general services, shall develop and administer a program to comply with the regulations of this part and part 13.

(d) The office shall develop policies and procedure to coordinate and direct efforts to assist Tennessee small businesses and diversity business enterprises.

(e) The office shall facilitate notification of state procurement and contracting opportunities to such businesses.

#### Section 12-3-805

(a) All state agencies shall fully cooperate and comply with this part and part 13 to ensure the participation of Tennessee small businesses and diversity business enterprises in the state's procurement and contracting opportunity program and adhere to the policies, procedures and reporting guidelines prescribed by the governor's office of diversity business enterprise.

(b) Each state agency shall designate a staff person as a small business liaison representative to the governor's office of diversity business enterprise to coordinate the agency's efforts to utilize Tennessee small businesses and diversity business enterprises in their procurement and contracting opportunities.

(c) Each state agency's small business liaison shall provide monthly to the governor's office of diversity business enterprise a report of solicitations issued, contract dollars awarded and payments made toward those contracts to Tennessee small businesses and diversity business enterprises.

(d) Each state agency shall regularly track its award and payment data to ensure its attainment of annual established goals for Tennessee small business, and diversity business enterprise participation in procurement and contracting.

(e) Contractors shall fully cooperate and comply with this part and part 13 to ensure the participation of Tennessee small businesses and diversity business enterprises in the state's procurement and contracting opportunity program and adhere to the policies, procedures and reporting guidelines prescribed by the governor's office of diversity business enterprise.

(f) Corporations relocated to the state as a result of the department of economic and community development's fast track incentive infrastructure development program shall make an effort to achieve Tennessee small business and diversity business enterprise participation in their procurements and contracts through their own prescribed program.

(g) Corporations shall provide to the governor's office of diversity business enterprise a quarterly report of contracts and purchase orders awarded and payments against such awards to Tennessee small businesses and diversity business enterprises.

Section 12-3-806.

(a) The commissioner is authorized to adopt rules and regulations establishing criteria and standards for goal setting that are set in accordance with availability of Tennessee small businesses and diversity businesses. In setting these goals, the governor's office of diversity business enterprise shall work closely with each state agency to ensure that goals are reasonable and obtainable.

(b) Individual goals shall be established for Tennessee small businesses and diversity business enterprises by each gender, racial and ethnic group.

(c) Nothing in this part or part 13 shall be construed as establishing any mandatory goal or quota with respect to Tennessee small businesses and diversity business enterprises.

Section 12-3-807.

(a) Through the process of certification, the ownership and control of businesses participating in the program shall be verified. In fulfilling its charge, the governor's office of diversity business enterprise is directed to work with all state agencies with procurement policy responsibilities to ensure compliance with the program requirements.

(b) All state agencies with authority to solicit bids or proposals for equipment, supplies, professional services, consulting services, construction contracts, and architectural and engineering services are required to actively solicit bids from Tennessee small businesses and diversity business enterprises in order to obtain their annual established goals for procurements and contracting.

(c) The commissioner of general services shall develop and adopt rules and regulations to establish a process for state agencies to actively solicit bids and requests for proposals that assist these agencies in achieving their established goals for participation of Tennessee small businesses and diversity business enterprises.

Section 12-3-808.

(a) In accordance with the provisions of this act, efforts shall be made to facilitate and maximize the participation of Tennessee small businesses and diversity business enterprises in state procurement and contracting opportunities.

(b) The commissioner shall develop and adopt rules and regulations to establish a process for bidders and proposers to demonstrate their efforts to



achieve Tennessee small business and diversity business enterprise participation on contracts awarded by this state.

(c) In order for a bid or proposal to be considered responsive, bidders and proposers shall show proof of their good faith efforts to achieve participation and provide a plan for utilizing certified participation at the time of submission of the bid or proposal.

(d) Bidders and proposer's good faith efforts and utilization plans shall be evaluated to determine if good faith efforts and a reasonable amount of participation has been achieved. The governor's office of diversity business enterprise shall assist in the evaluation.

(e) State agencies, contractors and corporations are required to review their Tennessee small business and diversity business enterprise utilization plans, prescribed programs for compliance or both.

Section 12-3-809. The commissioner shall develop rules and regulations to establish criteria for good faith efforts to evaluate and determine a bidder's or proposer's efforts to achieve the participation of Tennessee small business and diversity business enterprise. Each State agency which places a solicitation shall require its bidders and proposers to undertake good faith efforts.

Section 12-3-810.

(a) Each state agency is required to report monthly to the governor's office of diversity business enterprise as to the number of purchase orders and contracts awarded to Tennessee small businesses and diversity business enterprises on a form prescribed by such office.

(b) The commissioner shall annually report, on or before each December 31, to the governor and to each member of the general assembly concerning the awarding of state agency purchases and contracts awarded to Tennessee small businesses and diversity business enterprises made during the preceding fiscal year. Such report shall include:

(1) The number of solicitations to Tennessee small businesses and diversity business enterprises in total and by each gender, racial and ethnic group.

(2) The number of bids and proposals received from Tennessee small businesses and diversity business enterprises in total and by each gender, racial and ethnic group.

(3) The dollar amount of contracts and purchases orders awarded to Tennessee small businesses and diversity business enterprises in total and by each gender, racial and ethnic group.

SECTION \_\_. Tennessee Code Annotated, Title 12, Chapter 3, is amended by adding the following language as a new part 13:

Section 12-3-1301. In addition to the other provisions of this chapter concerning Tennessee small business and diversity business enterprise procurement and contracting opportunities, the governor's office of diversity business enterprise shall develop a plan to maximize participation of Tennessee small business in state agency procurement and contracting activities. In developing such a plan, the department shall establish a minimum participation goal of twenty percent (20%) to achieve the participation of Tennessee small businesses through both prime and second-tier state agency procurement and contracting opportunities.

Section 12-3-1302.

(a) Notwithstanding any provision of law to the contrary, the commissioner of general services shall promulgate regulations authorizing an allowance for Tennessee small businesses in the evaluation of bids and proposals for state contracts.

(b) An allowance shall be given to a Tennessee small business whose bid or proposal is equal to, or does not to exceed, the lowest responsive, responsible bidder on such bid or proposal.

Section 12-3-1303. The department is authorized and directed to identify qualified Tennessee small businesses, to undertake training programs and other educational activities to enable Tennessee small businesses to compete for contracts on an equal basis with other businesses, and to provide necessary assistance to state agencies seeking to maximize participation of Tennessee small businesses.

Section 12-3-1304. The commissioner shall include information concerning the effectiveness of this part in the annual report submitted to the governor and to each member of the general assembly pursuant to § 12-3-810.

SECTION \_\_. The department of general services, in consultation with the department of economic and community development, shall study opportunities available to Tennessee small businesses in state contracting and the potential effect of enhancing such opportunities through utilization of monetary allowances. As a basis for such study, any allowance to be given to a Tennessee small business shall not exceed five (5%) of the lowest responsive, responsible bidder meeting specifications and shall be applied on a sliding scale in the following manner:

(1) Five percent (5%) shall be allowed for contracts up to five hundred thousand dollars (\$500,000);

(2) Three and one-half percent (3.5%) shall be allowed for contracts up to seven hundred fifty thousand dollars (\$750,000);

(3) Two and one-half percent (2.5%) shall be allowed for contracts up to one million dollars (\$1,000,000);

(4) Two percent (2%) shall be allowed for contracts that exceed one million dollars (\$1,000,000); and

(5) For construction contracts over two million dollars (\$2,000,000), a two percent (2%) allowance shall be given to the bids of general contractors who, through use of subcontractors, utilize Tennessee small businesses to perform at least twenty percent (20%) of the work subject to the contract. Any general contractor that receives a contract pursuant to this subdivision shall provide periodic reports that the requirements

of the subdivision have been met or exceeded as may be required by the terms of the contract.

Any findings and recommendations shall be included in the first annual report submitted to the governor and to each member of the general assembly pursuant to § 12-3-810 after completion of such study.